

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12732 of 2000
with
SPECIAL CIVIL APPLICATIONS Nos.410, 415,
1492, 1551 and 2017 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

MUJAFFARALI NASIRALI

Versus

UNION OF INDIA

Appearance:

1. SCA No. 12732 of 2000 and 1492 of 2001,
MR TR MISHRA for Petitioner No. 1
MR MUKESH R SHAH for Respondent No. 1
MR MS RAO for Respondent No. 2
2. SCA No. 410, 415, 2017 of 2001
MR MUKESH H RATHOD for Petitioner No. 1
MR MUKESH R SHAH for Respondent No. 1
3. SCA No.1551 of 2001
MS ARCHANA SINGH for Petitioner No.1
MR MUKESH R SHAH for Respondent No.1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 26/12/2001

C.A.V. JUDGEMENT

1. A common question of law is involved in all these petitions and as they were argued and heard together, they are disposed by this common judgment.

2. The common issue involved in all these petitions is whether it was legal and proper for the Appropriate Government to refuse to refer, under the provisions of the Industrial Disputes Act, 1947 ("the Act" for short), the industrial dispute raised by the petitioners, only on the ground of long delay in raising the dispute.

3. In SCA No.12732 of 2000, the petitioner workman had worked upto 31.3.1991 under the respondent No.2 and requested to refer his dispute on 1.10.1999 on the basis of his demand notice dated 26.7.1999. He had approached the employer to consider his case and was given assurances that his case was under examination of the higher authorities, according to the petition, although no evidence of that is on record. By the impugned order dated 11.7.2000, it is conveyed that the Commissioner of Labour did not consider the dispute fit for adjudication for the reason that it had been raised after a period of nine years without any justification for the long delay. It is not the case of the petitioner that any justification or explanation was furnished to the Government for its consideration to explain the delay. Only a grievance appears to have been made in the letter dated 10.10.1999 that several other temporary workmen working in the telecom department since 1986 were regularised and a scheme pursuant to an order passed by the Honourable Supreme Court was framed to consider the cases of temporary and casual workmen, but the case of the petitioner was not considered despite the assurances given by the authorities.

4. In SCA No.1492 of 2001, the petitioner allegedly worked upto 25.3.1992 and demanded reinstatement by a notice dated 6.4.2000 and sought a reference of his dispute by letter dated 7.6.2000. The Government refused to refer the dispute on the ground, inter alia, that the dispute was raised after a lapse of eight years without any justification for the long delay. According to the

petition and the representation of the petitioner before the Assistant Commissioner of Labour, the petitioner had approached the employer and was assured that he would be provided work in near future. There was no material whatsoever in support of such plea.

5. In SCA No.415 of 2001, the petitioner was discharged on 31.8.1988; he lodged his complaint before the Conciliation Officer on 23.7.1999 and the order refusing to refer the dispute was made on 27.12.1999 on the ground that the dispute had been raised after a period of eleven years without any justification for the delay. According to the representation dated 23.7.1999 of the petitioner, the workman had approached the employer time and again for reinstatement, although no evidence in support of such plea appears to have ever been produced.

6. In SCA No.2017 of 2001, the petitioner claimed to have worked under the employer till 5.2.1993 and lodged a complaint before the Conciliation Officer on 8.9.1999. The reference of his dispute for reinstatement was refused by the order dated 15.3.2000 for the reason that the dispute was raised after six years without any justification for the long delay.

7. In SCA No.1551 of 2001, the petitioner was discharged from service from 2.2.1990 after having put in about 193 days of service and he served a demand notice on the employer on 16.7.1999. Reference of his dispute was refused by the order dated 29.8.2000 on the ground that the dispute was raised belatedly after a lapse of more than ten years without any valid reasons for the delay. A plea of extreme poverty of the petitioner was taken on behalf of the petitioner to explain and justify the delay although no such averment is found in the petition.

8. In SCA 410 of 2001, the petitioner, a casual labourer, claiming to have been orally discharged in August, 1988, had lodged complaint before the Conciliation Officer on 1.3.1998. The order refusing to refer his dispute, inter alia, on the ground of lapse of more than nine years without any justifiable reasons for the delay was made on 11.8.1998. The challenge to that order before the Central Administrative Tribunal, Ahmedabad Bench was withdrawn by the petitioner on 8.6.1999 after which, the present petition is filed with the plea that the petitioner had time and again approached the employer, but without any supporting material.

9. The common factual factor and the common ground for refusing to refer the dispute in all these cases is the unexplained and inordinate delay in raising the dispute and seeking a reference thereof. Therefore, the single issue that arises for consideration is whether it was legal for the Appropriate Government to decline to exercise its power of making a reference of the industrial dispute. It was vehemently argued on behalf of the petitioners that the impugned orders refusing to refer the disputes practically denied to the petitioners the opportunity of having their claims and disputes adjudicated merely on the ground of delay even as no limitation was prescribed in the Act. It was further submitted with the support of several judgments that disputes cannot cease to exist merely by lapse of time and if the disputes were referred, the adjudicating forum could always mould the relief by denying backwages and do justice to both the parties.

10. It is necessary to clarify at the outset that the issue before the Court is not whether and what relief could be granted to a workman after adjudication if long period has elapsed after the cause of action. Such question can arise only after a reference is made. But instead, the issue presently before the Court is whether it was legal and proper for the Government to refuse to make a reference only on the ground of unjustified or unexplained inordinate delay.

11. In the scheme of the Industrial Disputes Act, 1947, the provisions contained in Section 10 of the Act for making of the reference provide that, where the Appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing, refer the dispute to the forum mentioned in that section. Section 12 of the Act, under the title "Duties of Conciliation Officers" provides in sub-section (5) that where an Appropriate Government does not make a reference, it shall record and communicate to the parties concerned its reasons therefor.

12. The learned counsel for the petitioners relied upon the judgments of the Supreme Court in MAHABIR SINGH v. U. P. STATE ELECTRICITY BOARD [1999 II CLR 7] AND IN AJAIB SINGH v. THE SIRHIND CO-OPERATIVE MARKETING-CUM-PROCESSING SERVICE SOCIETY LTD. [AIR 1999 SC 1351] to submit that the fact that the dispute lingered on for a number of years would not mean that the dispute had ceased to exist and that even in a case where

delay was shown to be existing, the Tribunal, Labour Court or Board dealing with the case, can appropriately mould the relief by declining to grant backwages to the workman till the date he raised his demand regarding his illegal termination. On the other hand, the learned counsel for the respondent relied upon the recent judgments of the Supreme Court in THE NEDUNGADI BANK LTD. v. K.P.MADHAVANKUTTY [AIR 2000 SC 839] and SAPAN KUMAR PANDIT v. U.P.STATE ELECTRICITY BOARD [2001 AIR SCW 2685].

13. It is now well-settled that order of the Appropriate Government making reference is an administrative order and not a judicial or quasi-judicial one, that no lis is involved and as such, the order is made on the subjective satisfaction of the Government. It is also held in NEDUNGADI BANK (supra) that the power to refer is to be exercised reasonably and in a rational manner. In that case, there appeared to be no rational basis on which the Central Government had exercised the power after a lapse of about seven years after dismissal of the workman. It is in terms held by the Hon'ble Supreme Court that a dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. The Supreme Court has also expressed the view in TELCO CONVOY DRIVERS MAZDOORS SANGH v. STATE OF BIHAR reported in AIR 1989 SC 1565 that there may be exceptional cases in which the State Government may on proper examination of the demand come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. In a recent judgment of this Court in SAURASHTRA EMPLOYEES UNION v. SUB-DIVISIONAL OFFICER reported in 2000 (2) GLR 1259, the question directly in issue was whether a reference could be refused only on the ground of delay and, after referring to the Constitution Bench judgment of the Supreme Court in the case of STATE OF BOMBAY v. K.P.KRISHNAN reported in AIR 1960 SC 1223, it was noted that it was open to the Government to enquire whether the dispute raised a claim which was very stale or which was opposed to the provisions of the Act. In a case where the claim made was patently frivolous or was clearly belated, the Appropriate Government could refuse to make a reference. Thus, it was found and held that the authority had the power under Section 10 of the Act to refuse to make a reference only on the ground of inordinate delay particularly when no justification for the delay had either been substantiated or offered. Following this line of judgments, this Court has in Special Civil Application No.6634 to 1999 taken the view that the demands and disputes which are inordinately delayed and

where no plausible justification has been furnished by the petitioner to explain the delay, the orders refusing to make reference of stale demands are proper and legal.

14. The legal position is now further clarified by the recent judgment of the Supreme Court in the case of SAPAN KUMAR PANDIT (supra) in which an erudite discussion on the subject as under is found:

"8. Though no time limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and re-kindled by making a reference of it to adjudication? The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or is apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complimentary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the reference was made by the Government, it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference.

Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative, then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms, the Government could have exercised the power whatever be the range of the period which lapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed on the possibility of what another party would think whether any dispute

existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference there is a presumption that in the opinion of the Government there existed such a dispute."

15. In the facts of all these cases, there is no material indicating that at the time when the dispute was raised and sought to be referred, the dispute had continued to exist. Borrowing the words from the judgment in SAPAN KUMAR PANDIT (supra), the disputes had obviously submerged in stupor by long lapse of time and sought to be re-kindled by seeking their adjudication. The period envisaged by the enduring expression "at any time" had since long terminated with the eclipse of the industrial dispute. And, following the ratio in NEDUNGADI BANK (supra) and STATE OF BOMBAY v. K.P.KRISHNAN (supra), the Government had lacked the power to refer a dispute which did not subsist and had the power to refuse to refer a dispute raising very stale claim. Thus, in any view of the matter, the impugned orders refusing to refer the dispute have to be upheld. Therefore, all these petitions are rejected. Rule and Notice, as the case may be, stands discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)